

**REMARKS****INTRODUCTION:**

In accordance with the foregoing, claims 1, 4, 6, 7 and 8 have been amended. No new matter is being presented, and approval and entry are respectfully requested.

Claims 1, 4, 6, 7, and 8 are pending and under consideration. Reconsideration is respectfully requested.

**REQUEST FOR INTERVIEW:**

In the event that the present amendments to the claims do not place the application in form for allowance, Applicants respectfully request an in-person interview with the Examiner to facilitate advancing prosecution of the present application. The Examiner is invited to call Applicants' attorney Darleen J. Stockley at 202-434-1536 to determine a time that is mutually convenient. Applicants thank the Examiner for this consideration.

**REJECTION UNDER 35 U.S.C. §112:**

A. In the Office Action, at page 2, numbered paragraphs 2-3, claim 1 was rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. This rejection is traversed and reconsideration is requested.

Claim 1 has been amended in part to recite:

a selecting unit which selects a route load measuring unit out of the plurality of route load measuring units as a primary destination of the request for service and the route load measuring unit selects one server terminal out of said server terminals as a secondary destination of the request for service from said one client terminal based on the load measured by said route load measuring units, wherein each of said route load measuring units monitors operating states of respective server terminal and when a request for service is received from said one client terminal, said selecting unit selects one server terminal out of said server terminals as a the secondary destination of the request for service from said one client terminal based on the load and the operating states monitored by said load measuring units, wherein operating states include idle and active states

and to cancel the terminology:

wherein one of the route load measuring units is selected as a primary destination by the selecting unit based on the route load, and

where UDP is utilized, a number of simulated sessions for a server terminal utilizing UDP is used to select a server terminal for a secondary destination of routing.

Hence, amended claim 1 is now submitted to be clear and to comply with the written description requirement under 35 U.S.C. §112, first paragraph.

**B.** In the Office Action, at pages 3-4, numbered paragraphs 5-9, claims 1, 4, 6,7 and 8 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is traversed and reconsideration is requested.

Claims 4 and 6 have been amended in similar fashion to the amendment of claim 1.

In regard to the Examiner's assertion that it is unclear how measuring units located in multiple server terminals may be part of a single "relaying apparatus," it is respectfully submitted that, according to Merriam Webster's Collegiate Dictionary (Tenth Edition), the first definition of "apparatus" is "a set of materials or equipment designed for a particular use." Further, "material" is defined as "apparatus necessary for doing or making something," and "equipment" is defined as "the set of articles or physical resources serving to equip a person or things as the implements used in an operation or activity." Therefore, "apparatus" is not necessarily integrated in one piece, because apparatus is a set of materials or equipment. Thus, it is respectfully submitted that it is clear that the measuring units located in the multiple server terminals are part of a single "relaying apparatus."

With respect to the rejection of claims 7 and 8 under 35 U.S.C. §112, second paragraph, the terminology: "wherein one of the path load measuring devices is selected as a primary destination," which the Examiner submitted was unclear, has been cancelled. Claims 7 and 8 correspond to an embodiment disclosed at page 21, line 23 to page 27, line 24 in the specification. As described at page 27, lines 1 to 24, the DNX responding device functions as the selecting unit, by selecting a result of measurement (effective bandwidth) and deciding the server terminal corresponding to the result of measurement. The DNS responding device selects the destination but is not selected as the destination. Therefore, the terminology "wherein one of the path load measuring devices is selected as a primary destination" has been deleted.

It is respectfully submitted that the Examiner's concern with "A relaying apparatus" in claim 1 does not take into consideration lines 4-8 of page 1 of the specification, which recite: "The present invention relates to a relaying apparatus used in a network system for relaying a request for service (IP packet) from a client terminal to a server terminal. More specifically, this invention relates to a relaying apparatus for selecting an optimal destination for relay." That is, the present invention facilitates relaying a request for service from a client to a server terminal by routing the request to a server terminal having the lowest load and shortest distance from the client terminal. Hence, the terminology "relaying apparatus" is deemed to be appropriate under 35 U.S.C. §112, second paragraph.

With respect to the Examiner's concerns about the limitations "wherein said route load measuring units each measures ...a round-trip time, a maximum segment size, and an adjustable congestion-evading window size for a server terminal utilizing TCP," it is respectfully submitted that the terminology "operating state" refers to a state in which a computer manages operations, and that, in the present invention, the route load measuring units monitor the operating states of respective server terminals so that the client terminal can access a server terminal which is in the best operating condition and receive a service provided by that server terminal in accordance with desired parameters, for example as recited on page 47, lines 4-10 of the specification: "As described above, with the relaying apparatus for use in a network system according to the third embodiment described above, after a primary destination for routing a service request is selected, and one of the server terminals 500a to 500d is selected further taking into account operating states of these server terminals. Therefore, work load can optimally be distributed among the server terminals 500a to 500d." That is, a server terminal utilizing TCP and/or UDP may be utilized. Hence, the terminology "wherein said route load measuring units each measures ...a round-trip time, a maximum segment size, and an adjustable congestion-evading window size for a server terminal utilizing TCP" is respectfully submitted to be clear and definite under 35 U.S.C. §112, second paragraph.

The statement "wherein said route load measuring units each measures, as the load, an effective bandwidth of the route, the effective bandwidth estimated based on a plurality of parameters, wherein the parameters include

a round-trip time,

a maximum segment size, and

an adjustable congestion-evading congestion window size for a server terminal utilizing TCP"

in claim 1, and similarly in claims 4, 6, 7 and 8 is believed to make the selection clear under 35 U.S.C. §112, second paragraph.

#### **CONCLUSION:**

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot, and further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: March 14, 2007

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